IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ABRA FAITH NEWMAN,	)	
Plaintiff,	)	**Civil Action No. 7:02cv01024**
	)	
v.	)	**MEMORANDUM OPINION**
	)	
WILLIAM M. BOWEN, et al.,	)	**By: Hon. Samuel G. Wilson**
Defendants	)	**Chief United States District Judge**
	)	

Plaintiff Abra Faith Newman, proceeding pro se, brings this action under 42 U.S.C. § 1983, alleging defendants William M. Bowen and Jonathan D. Delp, Virginia State Troopers, used excessive force against her during an arrest. Trial is set for March 16, 2004. The matter is before the court on Bowen and Delp's motion for expedited review, motion to amend the judgment, and motion for retroactive filing, as well as Newman's objection to the court's order dated January 28, 2004, motion for appointment of counsel, and motion for continuance of trial. For the reasons stated, the court grants Bowen and Delp's motion for expedited review, overrules Newman's objection to the court's January 28, 2004, order, and denies all other pending motions.

I.

On September 12, 2000, Bowen and Delp stopped Newman's car at a traffic checkpoint in Franklin County, Virginia. Newman refused to give her name or a driver's license to Bowen and Delp and refused to exit her car when asked; consequently, Bowen arrested Newman. Virginia charged Newman with assault and battery of an officer, driving without an operator's license, failing to exhibit an operator's license to a police officer, and obstruction of justice. The Circuit Court for Franklin County granted Newman's motion to dismiss the failure to exhibit an operator's license to a police officer

charge and the assault and battery of a police officer charge. On August 16, 2001, a jury found Newman guilty of the remaining two charges, and the Circuit Court for Franklin County ordered Newman to pay costs and fines equaling $3,375.00.

Newman then brought this action, alleging that Bowen and Delp used excessive force while arresting her along with other claims stemming from her arrest and prosecution. By order dated April 1, 2003, this court dismissed all of Newman's claims except for the excessive force claim. Delp and Bowen submitted to this court a videotape of the arrest which shows Bowen and Delp using reasonable force to remove Newman from her car. Newman has filed a signed affidavit with this court stating:

> the beginning of WILLIAM M. BOWEN's aggressive and hostile acts toward me are not on any videotape because they either were not recorded or were edited out of the recording that was made. The videotape provided to this Court, taken from the State court file, is an edited tape that does not contain a good part of what went on at the traffic stop. Part of the assault on myself was edited out of the State court videotape when I saw it in the State court proceedings. . . . Also not shown on the videotape is the assault Mr. Bowen and Mr. Delp committed on me after they dragged me out of view of the video camera. This occurred when Bowen and Delp handcuffed me with the handcuffs being overly tight and causing excruciating pain at the points of contact and in the wrist and shoulder joints by twisting them into an unnatural position. The wrists were bent past the limit of their natural reach and my arms were put so that my hands were held up near my neck and felt as if my shoulders were being twisted out of their sockets. I was strapped into this unnatural position in the police car by Bowen and Delp for 45 minutes or more . . . I told Bowen and Delp they were causing me sever pain and suffering at the time but they did not care.

In an order dated January 28, 2004, this court denied Bowen and Delp's motion for summary judgment.

II.

Due to the imminent trial date, the court grants Bowen and Delp's motion for expedited review.

In their motion to amend judgment,[1] Bowen and Delp argue that the court should vacate its January 28, 2004, order and grant them summary judgment. Defendants argue summary judgment is appropriate because Newman has failed to present a "scintilla of evidence," Anderson v. Liberty Lobby, Inc., 477 U.S. 250, 252 (1986) based upon personal knowledge demonstrating how the defendants altered the videotape. The defendants argument is misguided. The focus of this action is not the authenticity of the videotape, but rather the manner of Newman's arrest. Newman is not required to state precisely how the videotape is inauthentic; rather, she must present sufficient evidence for a jury to find that the defendants used excessive force against her. To this point, she has presented an affidavit, based upon her personal knowledge as required by Federal Rule of Civil Procedure 56, detailing how the defendants treated her. If a jury believes Newman's affidavit, they may find for Newman. Consequently, the court denies Bowen and Delp's motion to amend judgment.[2]

III.

Newman has filed an objection to the court's January 28,2004, order, a motion for appointment of counsel, and a motion for a continuance of trial. The court denies the objection and both motions.

In her objection to the court's January 28, 2004, order, Newman states that "[a]gain and again this Court has ignored the fact that the complaint is SOLELY about the two charges dismissed at trial .

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[1]Although the defendants move for this court to amend judgment, the court has yet to enter a judgment in this case. The court will therefore treat the defendant's motion as a motion to amend the interlocutory January 28, 2004, order.

[2]Because this court denies defendants' motion to amend judgment, defendant's motion to allow them to file the motion to amend judgment retroactively is denied as moot.

. . This Court should vacate dismissal of the relevant portion of the complaint." Having reviewed the previous orders in this case, the court remains convinced that it properly dismissed the portions of Newman's complaint dealing with the dismissed charges. The court therefore overrules Newman's objection to the court's January 28, 2004, order.

Newman moves for appointment of counsel. However, "it is well settled that in civil actions the appointment of counsel should be allowed only in exceptional cases." Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). Finding no exceptional circumstances in the present case, the court declines to appoint counsel and denies Newman's motion.

Newman finally moves for a continuance of trial, citing her lack of access to a law library. The court finds that granting a continuance at this late stage would not serve the interests of justice and denies the motion.

ENTER: This ____ day of March, 2004

_____

CHIEF UNITED STATES DISTRICT JUDGE

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FOR THE WESTERN DISTRICT OF VIRGINIA
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ABRA FAITH NEWMAN,	)	
Plaintiff,	)	**Civil Action No. 7:02cv01024**
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v.	)	**ORDER**
	)	
WILLIAM M. BOWEN, et al.,	)	**By: Hon. Samuel G. Wilson**
Defendant	)	**Chief United States District Judge**
	)	

In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that: (1) Bowen and Delp's motion for expedited review is **GRANTED**; (2) Newman's objection to the court's January 28, 2004, order is **OVERRULED**; (3) all other pending motions are **DENIED**.

ENTER: This ____ day of March, 2004

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CHIEF UNITED STATES DISTRICT JUDGE